IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 860

EMPIRE PACKING COMPANY AND
SAMUEL CHAPMAN,

Petitioners,

VS.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

MICHAEL F. MULCAHY,
HENRY W. DIERINGER,
33 N. LaSalle Street,
Chicago, Illinois,
Attorneys for Petitioners.

The Scheffer Printing Company, FInancial 6-2694

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your Petitioners, Empire Packing Company, an Illinois Corporation, and Samuel Chapman, respectfully represent unto this Honorable Court, as follows:

I.

Summary Statement of Matter Involved.

The Petitioners, Empire Packing Company, an Illinois Corporation, and Samuel Chapman, were convicted by the District Court of the Northern District of Illinois of filing false claims against the Government of the United States. The indictment included 23 counts, all of which alleged that the defendants did unlawfully, wilfully, knowingly and feloniously present and cause to be presented

to the Defense Supplies Corporation for payment certain false claims against the Government of the United States, and the indictment set forth a series of claims for livestock, and slaughter payments for packers from September 17, 1943 through July 7, 1945. A fine of $5,000. was imposed upon the corporate defendant and the defendant, Chapman, was sentenced to a year and a day in the custody of the Attorney General. The United States Court of Appeals for the Seventh Circuit affirmed the conviction.

The Government contended the claims were false because Paragraph 5 of the certification on the claims, in counts 1 to 7, recited that for the period covered by each claim "the applicant had not wilfully violated any regulation of the War Food Administration or the Office of Price Administration relating to the purchase of livestock or to livestock slaughter, or to the sale or distribution of meat." In counts 8 to 23, the paragraph containing the certification is numbered 7 instead of 5. The Government attempted to prove overceiling sales were made by the defendants and that there was some up-grading of meat. Fred Sans, Jr., Vice President and Treasurer of Empire Packing Company, was also a defendant in this cause, but was acquitted by the trial court on defendant's motion at the close of the Government's case. The Government dismissed count 16.

A number of very important legal questions in this case have never been determined by this Court. Throughout the trial, as well as in the Court of Appeals, the Government contended that if a corporate officer received sidepayments for his own benefit his guilt could be imputed to the corporation even though the other corporate officers and stockholder had no knowledge of such sidepayments and the corporation had received no benefits. The Gov-

ernment did not stop with this one imputation but insisted that in addition to imputing the individual guilt, if any, of Samuel Chapman to the corporation to violate O.P.A. regulations, it then can impute such guilt to the corporation to form the necessary specific intent to file false claims, as a new and separate transaction.

The Court of Appeals on Page 6 of its opinion, states that Petitioner Chapman acted as a corporate officer in behalf of the corporation on the business of the corporation in accepting the alleged sidepayments. This decision is diametrically opposed to that which the same Court rendered on the identical facts in the case of *United States* v. *Chapman,* 168 Fed. 2nd 997, in which, the Court sustained Chapman's conviction for income tax evasion on the very same facts and decided the sidepayments involved constituted personal income to Chapman and could not be construed as being moneys due to the Empire Packing Company, a corporation. The facts pertaining to the O. P. A. violations were repeated in this case. The evidence showed without a question of doubt the claims filed by the Empire Packing Company by Fred Sans, Jr., its vice-president, were taken from the books and records of the corporation by Mr. Sans, which books and records had been audited by the O.P.A. and repeatedly audited by the Defense Supplies Corporation and the R.F.C. and found to be true and correct. The evidence further showed the subsidy claims were paid in full even to the extent of a final payment several months after this indictment was returned. The uncontradicted evidence shows the defendant, Samuel Chapman, did not sign the subsidy claims filed by Mr. Sans on behalf of the corporation, had no knowledge of them and never saw them. The Petitioner Chapman operated the killing and sales departments of the packing house, employing about 150 men, and Mr.

Sans ran the office without any assistance or advice from the Petitiorer Chapman.

The testimony shows the Petitioner Chapman had no schooling whatsoever and could not read or write and could not understand the books and records or the subsidy claims if the same were shown to him. Mr. Sans was acquitted by the trial court at the close of the government's case on motion of the defendant's Counsel. Mr. Sans took the stand on behalf of the defense and testified he prepared the claims in question according to the rules and regulations of the Defense Supplies Corporation and the R. F. C. and that he was in constant touch with these bureaus and had followed the instructions to the letter. (Tr. 333).

The Government offered an F.B.I. Agent, who testified he never read the Defense Supplies or R. F. C. rules and regulations, nor did he read the instructions attached to the subsidy claim form. (Tr. 298-299) He admitted he devised a formula of his own which competely departed from the procedure set forth by the rules, regulations and instructions promulgated by the Defense Supplies Corporation and the R.F.C. He further admitted his qualifications consisted only of a few weeks night school studying bank accounting and he had never before worked on a case of this nature, nor had he ever been in a packing house to observe its procedure. When given a specific example on cross-examination, he admitted his home made formula was wrong. (Tr. 298-299) The Court of Appeals in its opinion must have accepted the home made formula and its necessary erroneous results in order to state the Company's books and records were incorrect, because they did not reflect upgrading, short weights and false quantities, for there is not a scintilla of evidence on this point in the record other than the testimony of the F.B.I. Agent from his own formula.

The Court of Appeals overlooked the important legal questions involved in the case, particularly the question of corporate criminal responsibility, that is, whether or not a violation of an O.P.A. regulation by a corporate officer receiving sidepayments for his own benefit, could be imputed to a corporation where the other corporate officers and stockholder had no knowledge of such sidepayments and the corporation received no benefits therefrom, and then could the corporation be held to have guilty knowledge of such O.P.A. violations sufficient to form an intent to file a false claim for subsidies, through or by a totally innocent corporate officer, who had no knowledge of any O.P.A. violation by his fellow corporate officer. For the Court of Appeals to hold a corporation guilty of filing false claims because of a certification stating that the corporation "had not knowingly and wilfully violated any O.P.A. regulation" requires a double imputation of knowledge and guilty intent to commit a crime, first, that the O.P.A. violation was imputable to the corporation and secondly, that such knowledge was imputable to the corporate officer making the certification on the subsidy claims on behalf of the corporation to establish the necessary guilty intent to file false claims. The trial court acquitted the corporate officer who prepared and filed the claims as being completely innocent. This point the Court of Appeals failed to mention, but rested its opinion on imputing the individual O.P.A. violation to the corporation and concluding that such knowledge was sufficient to cause the corporation to file false claims, completely ignoring the second necessary and vital step.

The opinion of the Court of Appeals is not consistent with the decision it rendered in *United States* v. *Chapman*, 168 F. 2nd 997, when in reviewing the identical facts with the same defendant, Chapman, receiving the same side-

payments mentioned herein, it held Chapman was not acting on behalf of the corporation and so decided that those facts as to amount to *res judicata* when the same identical facts are repeated in the instant case. It is contended by the Petitioners that the Court should follow its first decision on that point and not now say the Petitioner Chapman was acting on behalf of the corporation, for if such were the case he could not have been guilty of receiving moneys for his own benefit and evading the payment of income tax, for such moneys would have had to be corporate funds and the Wilcox case would have had to apply. Virtually, the entire opinion of the Court of Appeals proceeds upon the theory that the corporation and the Petitioner Chapman were being tried for violations of the Emergency Price Control Act of 1942, as amended, when the indictment was for filing of false claims.

The Court of Appeals completely ignored and failed to discuss the basic and fundamental principles of law urged by the Petitioners when they invoked the Court's reviewing powers. It is contended by the Petitioners that there is not an iota of proof in the entire record upon which to sustain a conviction for filing false claims, and the law unquestionably sustains the Petitioners' contentions.

II.

A Statement Particularly Disclosing a Basis of Jurisdiction to Review the Judgment.

The order of the Court of Appeals affirming the judgment of the trial court was entered April 8, 1949 (Tr. 379). A Petition for rehearing was timely filed and denied on May 16, 1949 (Tr. 409).

Jurisdiction is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936; Title 28 U.S.C.A. 347); also because the Court of Appeals has decided important questions of Federal law, which have not been, but should be settled by this Court, (Supreme Court Rule 38, Par. (5) (b)), namely:

(1) Whether or not a violation of O.P.A. regulation by a corporate officer receiving side payments for his own benefit can be imputed to a corporation where the other corporate officers and stockholder had no knowledge of such sidepayments and the corporation received no benefits therefrom, and then can the corporation be held to have guilty knowledge of such O.P.A. violations sufficient to form an intent to file a false claim for subsidies through or by a totally different and completely innocent corporate officer who had no knowledge of any O.P.A. violation by his fellow corporate officer; also,

(2) Because the Court of Appeals has decided a Federal question (namely, can a corporate officer be guilty of filing false claims based upon a certification of which he had no knowledge whatever), in a way probably in conflict with applicable decisions of this Court; and has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such a departure by a lower Court as to call for an exercise of this Court's power of supervision in permitting the rejection of the rules, regulations and instructions promulgated by the Defense Supplies Corporation and the R.F.C. and permitting the F.B.I. Agent to substitute in lieu thereof, his home made formula in computing subsidy claims, in sharp conflict with the promulgated rules of the Defense Supplies Corporation and The R.F.C.; and also

(3) There is a novel federal question of criminal law which has never before been decided by a Federal Court of Review and is of such grave importance that it should be decided by this Court, namely, is it possible to hold a corporation guilty of filing false claims because of a certification stating the corporation had not knowingly and wilfully violated any O.P.A. regulation, which requires a double imputation of knowledge and guilty intent to commit a crime, first that the O.P.A. violation was imputable to the corporation, and secondly, that such knowledge was imputable to the corporate officer making the certification on the subsidy claims on behalf of the corporation to establish the necessary guilty intent to file false claims.

III.

The Questions Presented.

1. Can a corporation be presumed to have knowledge of overceiling sales where a corporate officer receives a sidepayment as a premium for the sale of corporate merchandise, the corporation receiving no benefits and the other corporate officers and stockholder having no knowledge of the sidepayments; and can a presumption then be drawn that the corporation wilfully and knowingly filed a claim for subsidies where the claim requires a certification that the applicant corporation did not wilfully violate O.P.A. regulations?

2. Can there be a double imputation of constructive knowledge of corporate employees to the corporation in such a manner as to supply the necessary specific intent to commit the crime of filing false claims.

3. Is constructive knowledge of a corporation sufficient to form a wrongful purpose to constitute the essential element of the offense of knowingly and wilfully falsifying or

concealing a material fact or making false representations in any matter within the jurisdiction of a department or agency of the United States.

4. The test of corporate responsibility for the acts of its officers and agents, whether such acts be criminal or tortious, is whether the agent or officer in doing the thing complained of was engaged in employing the corporate powers actually authorized, for the benefit of the corporation, while acting in the scope of his employment in the business of the principal.

5. The general rule is that where the crime charged involves guilty knowledge or criminal intent, it is essential to the criminal liability of an officer of the corporation, that he actually and personally do the acts which constituted the offense, or that they be done by his direction or permission.

6. Should not the Court of Appeals be bound by its own decision rendered in *United States* v. *Chapman*, 168 Fed. 2nd, 997, in reviewing the identical facts with the same defendant?

7. The judgment is not supported by material, competent, substantial evidence and cannot stand.

IV.

Reasons Relied On for the Allowance of the Writ.

The following are the important reasons why this Court should grant a writ of certiorari.

1. The Court of Appeals rendered a decision in the instant case which failed to decide a very novel theory in the field of criminal law which was asserted by the Prosecution. The conviction is based upon the very dubious theory that the individual wrong doing of a corporate officer in a separate transaction may be imputed to the cor-

poration, and that this imputed knowledge when added to an act of a different and wholly innocent corporate officer in an entirely different matter, that is, filing a claim in behalf of the corporation, will render the corporation guilty of presenting false claims to the Government.

The rule has always been otherwise. A diligent search of the authorities reveals no case supporting the Government's theory that the personal or individual acts of different corporate officers as to separate and totally unrelated transactions may be aggregated so as to constitute a crime requiring a specific intent, in the absence of proof of a common design or purpose so to do.

2. The Court of Appeals rendered a decision which is inconsistent with the decision it rendered in *United States* v. *Chapman,* 168 Fed. 2nd 997, when in reviewing the identical facts with the same defendant Chapman, the Court of Appeals held that the very same sidepayments received by Chapman constituted personal income to him and did not belong to the corporation. In so holding, the Court decided the *Wilcox* case had no application, yet in the case at bar, the same Court holds upon the identical facts, that the corporation was guilty of receiving sidepayments. Either this case falls within the rule of law set forth in *Commissioner* v. *Wilcox,* 327 U.S. 404, or it does not. The Court of Appeals has made diametrically opposite decisions upon the identical facts, and pertaining to the same persons in both cases.

3. The Court of Appeals rendered a decision upon an important question of Federal law which completely overlooked the fact that the crime charged in the indictment was filing false claims and not a violation of the Emergency Price Control Act of 1942, as amended. Virtually, the entire opinion is devoted to holding the corporation guilty of O.P.A. violations by imputing Chapman's indi-

vidual knowledge to the corporation. Practically this means "guilt by association", a doctrine never recognized by this Court.

4. The Court of Appeals rendered a decision upon an important question of Federal law which has not been, but which should be decided by this Court, and that is whether or not it is permissible for an F.B.I. Agent to wholly disregard the rules and regulations of the Defense Supplies Corporation and the R.F.C. and substitute in lieu thereof a self devised and home made formula for the payment of subsidies for slaughter houses, which the F.B.I. Agent admitted upon cross-examination was devised by himself, and he had never read the rules and regulations of the Defense Supplies Corporation and the R.F.C. pertaining to the points in question.

5. The Court of Appeals has rendered a decision upon an important question of Federal law which fails to take into account the fundamental rule of law that a crime requiring a specific intent cannot be committed carelessly, negligently or passively.

6. The Court of Appeals rendered a decision upon an important question of federal law which completely overlooked and failed to mention the question of whether a corporation may be convicted of a crime of filing false claims against the Government, where there is a total absence of proof that the corporation had a wrongful purpose in presenting the claim or that the corporation or any officer or stockholder thereof knew that any part of the claim was false. Indeed, the entire record fails to support the Government's charge that the claim was false.

It is submitted that even if the Government's theory of this case were to be accepted, it would clearly appear from the evidence and from the pleadings, that no single cor-

porate officer or stockholder, or group or combination of either, ever had sufficient facts within their knowledge to enable them to form the specific intent which is a prerequisite to the commission of the crime of presenting false claims. This is particularly important in view of the fact the Petitioner Chapman could neither read nor write, and the persons to whom he entrusted the bookkeeping and paper work of the business had their accounts and records repeatedly audited, verified and approved by the O.P.A., the R.F.C. and the Defense Supplies Corporation.

Wherefore, your Petitioner prays that a writ of certiorari issue under the seal of this Court directed to the United States Court of Appeals for the Seventh Circuit commanding said Court to certify and send to this Court a full and complete transcript of the record and the proceedings of the said Court of Appeals had in the case numbered and entitled on its docket, Number 9582, *Empire Packing Company and Samuel Chapman, Defendants-Appellants* v. *United States of America, Plaintiff-Appellee,* to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment herein of the said Court of Appeals be reversed by this Court, and for such further relief as to this Court may seem proper.

Respectfully submitted,

MICHAEL F. MULCAHY,
HENRY W. DIERINGER,
Attorneys for Petitioner.

Dated June 9, 1949.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No.

EMPIRE PACKING COMPANY AND
SAMUEL CHAPMAN,

Petitioners,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Opinion Below.

The opinion of the Court of Appeals (April 8, 1949) is not yet reported. It is printed in full in the Transcript of Record (at pages 379 to 385, inclusive.) The petition for rehearing (timely filed) was denied May 16, 1949 (Tr. 409).

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936; Title 28 U.S.C.A. 347). The Court of Appeals for the Seventh Circuit has in this case "decided important questions of Federal law which has not been but should be settled by this Court" (Supreme Court Rule 38 (5) (b)), furthermore the Court of Appeals

decided Federal questions in this case in a way probably in conflict with applicable decisions of this Court and have so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision. (Supreme Court Rule 38 (5), Par. (b).)

Statement of the Case.

The Petitioners, Empire Packing Company, an Illinois corporation and Samuel Chapman, along with one Fred Sans, Jr., were indicted in the Northern District of Illinois for allegedly filing false claims with the United States Government to obtain packing house subsidies. The case was tried before the Court without a jury and the Empire Packing Company and Samuel Chapman were found guilty. Fred Sans, Jr. was acquitted at the close of the Government's case on motion of Counsel for the defense. The Corporation was fined $5,000.00 and Chapman was sentenced to a year and a day in the Penitentiary. On appeal, the United States Court of Appeals for the Seventh Circuit affirmed the conviction (Tr. 379).

The opinion was written by District Judge Wham, sitting as one of the Judges in the Court of Appeals to hear this case.

Several errors are alleged and were urged on appeal to the Court of Appeals, all of which were resolved against the Petitioners or completely ignored by the Court. Samuel Chapman was the President and principal stockholder of the Empire Packing Company, an Illinois Corporation, engaged in the slaughtering, processing and sale of meat. The indictment charged that the corporation, Samuel Chapman and Fred Sans, Jr. had filed or caused to be filed, certain claims with the United States Govern-

ment for the allowance of subsidies, and that said claims were false because a certification on said claims stated, "that the applicant had not knowingly and wilfully violated any of the rules or regulations of the War Foods Administration or the Office of Price Administration * * *." All of the subsidy claims were prepared, signed and filed by Fred Sans, Jr., as Secretary and Treasurer of the Company, who was in active charge of the office affairs of the corporation. Uncontradicted evidence showed the Petitioner herein, Samuel Chapman, never saw the subsidy claims, had no knowledge of their contents, did not sign them, did not file them, nor cause them to be filed. The Court acquitted Fred Sans, Jr. at the close of the Government's case with the remark, "outside of the fact that defendant Sans admitted that he filed these, what proof is there?" (Tr. 324) The Government relied upon the testimony of an F.B.I. Agent to discredit the books and records of the corporation and the F.B.I. Agent, Hubert Gordon, had to admit he completely disregraded all the rules, regulations and instructions of the Defense Supplies Corporation and the R.F.C., and had invented a formula of his own to figure subsidy claims. Upon being given a specific example, he admitted his calculations were in error and he had not even read the rules, regulations or instructions of the Defense Supplies Corporation or the R.F.C. (Tr. 298-299.)

The Government offered some evidence to the effect that Petitioner, Samuel Chapman, received some sidepayments for the sale of meat which he put in his pocket, and which was not reflected on the invoices or the books and records of the corporation. Chapman denied receiving any sidepayments. The Government contended that any violation of O.P.A. regulations by Chapman, as an individual, could be imputed to the corporation, and that

in turn the corporation therefore had sufficient knowledge to commit a new offense, namely, filing false claims through a different officer, who no knowledge whatsoever of his fellow officer's violations, if any were committed. Petitioners herein have insisted throughout that if Chapman had received any sidepayments for his individual benefit, without the knowledge of the other corporate officers or the other corporate stockholder, the corporation could not be charged with such knowledge, for Chapman was acting beyond the scope of his authority. The Petitioners have further contended that even if it is held that Chapman's knowledge of O.P.A. violations, committed by himself, for his personal benefit, were imputable to the corporation, it could only be constructive knowledge as to the corporation and not sufficient to form a specific intent for the corporation to commit a crime through another and totally innocent corporate officer in certifying to subsidy applications that, "applicant had not knowingly and wilfully violated O.P.A. regulations."

The opinion of the Court of Appeals is almost entirely devoted to finding the corporation guilty of O.P.A. violations, but fails to mention the all important second step of whether or not a corporation can through an innocent officer commit a crime. The question of double imputation or cross-imputation of knowledge between the various corporate officers and the corporation was completely ignored in the opinion.

In the Petitioners' petition for rehearing filed with the Court of Appeals the importance of the opinion was pointed out, particularly, the manner in which it would affect the payment of subsidies throughout the United States, and that it would undoubtedly cause the destruction of many corporations, for claims for refunds of subsidies would undoubtedly follow this opinion, for the

obvious reason that almost every corporation probably had some of its employees receiving sidepayments of some kind or other for their own personal benefit, without the knowledge of the corporation, and if it is held the corporation was chargeable with such knowledge then all the corporations must have filed false claims.

It was further pointed out to the Court that this could not have been the intent of Congress for the subsidies were paid by slaughters and packing houses to be passed on to the farmers, and the slaughter houses and packing houses were merely acting as a conduit in the same manner as a Bank sells Government bonds and passes the money on to the Government without any profit for handling the transaction. (Tr. 395-396)

Specification of Errors.

Errors intended to be urged are those specified as questions 1 to 7, inclusive, under division III of the Petition, at pages 8 and 9, the Court of Appeals having ruled adversely or having failed to rule on such questions.

Summary of Argument.

1. A corporation cannot be guilty of a crime where the corporation sold its merchandise at O.P.A. ceiling prices, but a corporate officer collected sidepayments independently of the ceiling price, for his own benefit and without benefit to the corporation and without knowledge of the other corporate officers or stockholder.

2. A conviction cannot be sustained where presumptions are based upon presumptions, and to sustain this conviction a double imputation or cross-imputation of constructive knowledge of corporate officers to the corporation or to each other is used, contrary to all the principles of criminal law.

3. A wrongful purpose is an essential element of the offense of knowingly and wilfully falsifying or concealing a material fact or making false representations in any matter within the jurisdiction of a department or agency of the United States, and must be proved in each offense charged. No such proof was ever made on any count of the indictment in the case at bar.

4. The test of corporate responsibility for the acts of its officers and agents, whether such acts be criminal or tortious, is whether the agent or officer in doing the thing complained of was engaged in employing the corporate powers actually authorized, for the benefit of the corporation, while acting in the scope of his employment in the business of the principal. This test was completely ignored by the trial court and the Court of Appeals and the evidence conclusively proved the corporation could not be charged with criminal responsibility.

5. The general rule is that where the crime charged involves guilty knowledge or criminal intent, it is essential to the criminal liability of an officer of the corporation, that he actually and personally do the acts which constituted the offense, or that they be done by his direction or permission. This rule was ignored by both the trial court and the Court of Appeals for the evidence conclusively shows the corporate officer, who was alleged to have violated the O.P.A. regulations, had no knowledge of the subsidy claims, never saw them and had nothing whatsoever to do with their preparation, and the officer who had prepared the subsidy claims upon which the indictment was based, had no knowledge whatsoever of any O.P.A. violations.

6. The Court of Appeals should be bound by its own decision rendered in *United States* v. *Chapman,* 168 Fed. 2nd, 997, wherein it held the corporate officer, Samuel

Chapman, received the sidepayments in question for his own use and benefit, and the same constituted taxable income to him, the corporation having nothing whatsoever to do with the transaction. The same identical facts were repeated by the same persons in the case at bar, yet the Court of Appeals comes to the directly opposite conclusion that the corporation was criminally responsible. The doctrine of *res adjudicata* and *stare decisis* should be applied.

7. The judgment is not supported by material, competent, substantial evidence and cannot stand. In order to sustain a conviction, the Court of Appeals had to sanction a departure from the accepted and usual course of judicial proceedings by the lower Court by totally disregarding the rules, regulations and instructions of the Defense Supplies Corporation and the R.F.C., which rules, regulations and instructions were duly promulgated and have the full force and effect of any law. The trial court and the Court of Appeals accepted the home made formula of an F.B.I. Agent to calculate subsidy payments, which home made formula is in conflict with and directly contrary to said rules, regulations and instructions of the duly authorized Government Agency, namely, the Defense Supplies Corporation and the R.F.C. It is therefore necessary that this Court exercise its power of supervision to prevent the establishment of an incorrect and improper precedent.

ARGUMENT.

The argument herein is designed to follow the questions presented in the petition and the reasons relied on for the allowance of the writ in the same order as set forth in the Petition.

I.

A corporation is not guilty of a crime where the corporation sold at ceiling prices, but a corporate officer collected payments independently of the ceiling price without benefit to the corporation or awareness on the part of its other stockholders.

The Empire Packing Company, an Illinois Corporation, was indicted with Samuel Chapman, its President, and Fred Sans, Jr., its Treasurer, for wilfully, knowingly and feloniously presenting and causing to be presented to the Defense Supplies Corporation for payment, certain false claims against the Government of the United States. The indictment contained 23 counts, covering all claims filed by the defendant from September 17, 1943 through July 7, 1945 (Tr. 2). The Government contended the claims were false because Paragraph 7 of the certification set forth that during the period covered by the claim, "the applicant has not wilfully violated any regulation of the War Food Administration or the Office of Price Administration applicable to livestock slaughter or the sale or distribution of meat." It should be remembered the applicant is and was the Empire Packing Company, a corporation, and the certification was made by and signed by Fred Sans, Jr., Vice-president, as his own personal certification, beginning with the words, "I certify that —."

The Government never proved or contended the corporation received any sidepayments or overceiling payments. Samuel Chapman denied receiving any sidepayments (Tr. 348). Fred Sans, Jr., the man who had prepared and filed the claims in question (Tr. 332) was acquitted by the trial court on defendant's motion at the close of the Government's evidence.

Mr. Sans is the owner of 50% of the common stock in the Empire Packing Company, the rest of the stock is owned by Samuel Chapman (Tr. 188). The evidence conclusively showed Fred Sans has complete charge of the office and the Company books and records and handled the subsidy claims in question without discussing them with Chapman in any manner; that Chapman had no knowledge of the claims, never saw them (Tr. 335), did not file them or cause them to be filed, or in any way tell Sans what to do or how to do it. Chapman did not sign anything. Chapman can neither read nor write.

Fred Sans, Jr. was acquitted by the trial court at the close of the Government's case, the Court remarking, "outside of the fact that defendant Sans admitted that he filed these, what proof is there?" (Tr. 324.) Obviously, the Court's statement that Sans admitted filing them was based on statements of Counsel for Sans, Counsel freely admitting at all times that Sans did file the claims. Actually Sans had not as yet testified, but when he did testify he took full responsibility for the preparation of the claims, the signing and filing of the same (Tr. 334-335).

It is undisputed that if Sam Chapman received sidepayments for the sale of corporate merchandise the money never went into the corporate till, nor did the other corporate officer, Sans, have any knowledge of an O.P.A. violation.

In *United States* v. *Hare,* 153 F. 2nd 816, the Court said:

> "The corporate entity sold liquor at ceiling prices, but appellants by means of an exorbitant premium collected independently of the ceiling price but in the negotiation of the ceiling price sale, turned the legitimate sale into an illegal sale, without benefit to the corporation or awareness on the part of its other stockholders or employees. The corporation was not the 'principal' in the crime, it was the medium manipulated by appellants to the end desired."

In the *Hare* case, the Court recognized, that the corporation having received no benefits was wholly innocent of any wrongdoing, even though the three Hare brothers were making the overceiling sales and had full knowledge of the violations. The Hare family owned all the stock of the corporation.

In the case of *Johnson* v. *United States,* 167 F. 2nd 339, two salesmen for Barkley & Co., Ltd., a corporation, were convicted by a jury, for making overceiling sales of whiskey. The evidence indicated the buyer slipped $1200.00 into the pocket of the defendants. Both testified the money was intended as a gratuity at a time when two lots of the whiskey had been delivered, and the third delivery was yet in prospect. The Court held the evidence was sufficient to sustain a conviction of selling at overceiling prices and the conviction was reversed. Barkley & Co., Ltd., the corporate employer, was not even charged with a crime.

These cases illustrate the principle that an overceiling sale by a salesman or an officer of the corporation for his own personal benefit, retaining the proceeds for himself, and in no way benefiting the corporation, cannot make the corporation guilty of a crime.

II.

A conviction cannot be sustained where presumptions are based upon presumptions.

To sustain this conviction a double imputation of constructive knowledge of corporate employees to the corporation is required. As a first step it is necessary for the Court to find Chapman as an individual had in some manner violated O.P.A. regulations, and that the knowledge of the violation possessed by Chapman is imputable to the corporation. Would that knowledge cause the corporation to become guilty of the offense of violating an O.P.A. regulation? The next step according to the theory of the prosecution, is the filing of a claim by Fred Sans, Jr., another corporate officer, the Treasurer. The evidence is undisputed that Fred Sans, Jr. prepared the claims, signed them and presented them. May these separate acts and transactions by aggregation be held to constitute the crime of filing false claims? No concerted action, no common design or purpose has ever been alleged, much less proven. The prosecution contends it has the right to add together several isolated incidents and separate steps to constitute in the aggregate, the essential elements of the crime requiring specific intent. It has never been established that any individuals or corporate officers, or a combination of either or both, ever had at any time, sufficient facts and information at hand to enable them or any of them to form the specific intent to file false claims against the Government of the United States.

It is apparent that first, in order to find the corporation guilty it was necessary to presume the corporation had knowledge the Petitioner, Chapman, was violating an O.P.A. regulation, and that such personal acts of Chapman would constitute a willful violation of O.P.A. regulations by the corporation, and then as a next step, it is

necessary to presume the corporation wilfully and knowingly filed a false claim for subsidies on the theory the corporation first wilfully violated the O.P.A. regulation. It is obvious the Court had to indulge in two presumptions, one based upon the other, and then impute both to the corporation.

Rabiste v. *United States,* 44 F. 2nd 21.
Wagner v. *United States,* 8 F. 2nd 851.

III.

A wrongful purpose is an essential element of the offense of knowingly and wilfully falsifying or concealing a material fact or making false representations in any matter within the jurisdiction of a department or agency of the United States, and must be proved in each offense charged.

Such is the holding in *United States* v. *Buckley,* 49 F. Sup. 993, where the Court was construing the statute under which the indictment at bar is brought. There is not an iota of evidence in the case on appeal that the applicant Empire Packing Company had a wrongful purpose in mind when it filed the claims for subsidies with the Defense Supplies Corporation, and later the R.F.C. for their consideration, they being the duly authorized agency of the United States Government, to check and allow or disallow the claims of this character. At this time we wish to point out that both agencies not only investigated thoroughly all of the claims and approved the same, but also audited the corporate records (Tr. 333-4) before this indictment was returned and after the indictment was returned. As a matter of fact an additional claim was allowed and paid after the indictment was returned (Tr. 334). These agencies have it within their power to cancel the payments or recall the same, but they have never seen fit to do so

on these claims, which are approved and paid in full (Tr. 335). We have bitterly complained that another agency of the United States Government, namely, the Federal Bureau of Investigation, should not take it upon themselves to review the actions of the Defense Supplies Corporation or the R.F.C. and by the testimony offered by their agent on the trial, attempt to change all of the formula set forth in the instructions and regulations of the R.F.C. and followed by the corporate Petitioner. Mr. Gordon, the F.B.I. agent distorted the figures on the claims by applying a method invented by him and his fellow accountants without regard to the instructions and regulations of the R.F.C. (Tr. 301). In fact, he admitted on the stand that he had not even read them (Tr. 298). Mr. Gordon wanted to apply subsidies according to the number of cattle by head in a given class, rather than by the total live weights established by the Defense Supplies Corporation and the R.F.C., and when given a simple problem by counsel for the defense, had to admit that he would distort the figures by using his method (Tr. 298).

Mr. Gordon also tried to prove the Company had changed the grades of animals by comparing graders' sheets with invoices but he had to admit he was not familiar with the regrading process and subsequent evidence proved he had not taken into consideration the regrading, and that regrading was done every day, but not shown on the graders' sheets, as testified to by the Government Grader (Tr. 307), Sans, and Chapman (Tr. 351). Mr. Gordon also tried to use weights from the kill sheets, but it was proven that kill sheets are for internal control only, and are not used in figuring subsidies (Tr. 344).

In considering whether or not the corporation had a worngful purpose in mind when filing the subsidy claims through its Vice-President, Fred Sans, it must be remem-

bered the trial court acquitted Fred Sans, obviously for the reason that he had no knowledge or intent to file false claims, nor did he have any wrongful purpose in mind; therefore, he being the corporate officer acting on behalf of the corporation and being solely and exclusively in charge of that department, it follows the corporation could not have wilfully and knowingly filed false claims. In *United States* v. *Raymond,* 37 F. Sup. 957, the Court said:

> "The rule is universally recognized that for a representation to be fraudulent it must be made concerning a material fact with knowledge of its falsity and with intent to deceive. It necessarily follows that a person would have to know of the materiality of a representation which he is accused of making fraudulently. Otherwise he could not be making use of it with intent to deceive."

This rule applies with full force and effect to the Petitioner Samuel Chapman, because all of the evidence shows Chapman had nothing whatsoever to do with the preparation of the claim, the filing of the claim, or the receipt of the money, furthermore he had no knowledge of the books and records of the corporation, nor of the contents of the same, never having seen them (Tr. 346).

In *United States* v. *Mellon,* 96 F. 2nd 462, the Defendant Mellon made application for a loan to be insured under the National Housing Act. He and Kaplan, President of the corporation, were both charged with making false statements under the same statute in question here, with conspiracy to make false statements. The president of the corporation had actually endorsed the check, and the court in reversing the conviction of Kaplan on both counts said:

> "That act was apparently but a formality — there was no proof that either Kaplan or the corporation received any of the proceeds of the check."

In the case at bar, the Empire Packing Company did not receive the proceeds of the alleged sidepayments, neither did it keep the proceeds of the subsidies, the same being passed on to the proper persons (Tr. 64, par. 6), and the Petitioner Chapman did not even go through the formality of signing any documents, therefore he cannot be charged with constructive knowledge of their contents, sufficient to constitute a criminal intent as set forth in the foregoing rules. In the absence of such, the conviction of both the corporation and the defendant Chapman is erroneous.

IV.

The test of corporate responsibility for the acts of its officers and agents, whether such acts be criminal or tortious, is whether the agent or officer in doing the thing complained of was engaged in employing the corporate powers actually authorized, for the benefit of the croporation, while acting in the scope of his employment in the business of the principal.

The above proposition is from *Egan* v. *United States,* 137 F. 2nd 369. The Court had occasion to determine the test of corporate responsibility for the acts of its officers and agents. In that case, the corporate officers set aside a political slush fund for corporate purposes, the same having been accrued from refunds by attorneys employed by the corporation and refunds of padded expense accounts of the employees. The outstanding point in the case was that all of the acts done by the corporate officers were to promote or advance some corporate design or project. We submit this is the true test of whether or not a corporation should be held criminally liable.

If the acts of the officers and agents are not designed to benefit the corporation and are done without the knowledge of the other corporate officers, and in effect can be

to the corporate detriment if discovered, surely the corporation should not be held criminally liable. Under this test, the Empire Packing Company cannot be guilty of O.P.A. violations, and certainly cannot then be charged with the criminal intent required to violate the statute of the United States pertaining to the filing of false claims.

V.

The general rule is that where the crime charged involves guilty knowledge or criminal intent, it is essential to the criminal liability of an officer of the corporation, that he actually and personally do the acts which constituted the offense, or that they be done by his direction or permission.

We have just demonstrated how it is impossible for the corporation to have guilty knowledge or criminal intent to file a false claim for subsidies, and now we come to the question of whether or not a corporate officer can be guilty of filing a false claim or causing a false claim to be filed, if that corporate officer has no knowledge or criminal intent, for it is essential that he actually and personally do the acts which constitute the offense, or that they be done by his direction and permission. In the case at bar the Petitioner, Samuel Chapman, is charged with having presented or caused to be presented, false claims to the Government for payment. The evidence conclusively demonstrates that Chapman did not present the claims, had no knowledge the claims were presented, or what they contained, nor did he cause them to be presented (Tr. 335), nor were any specific claims presented by his direction or permission.

The above rule cited was followed in *Holland Furnace Co.* v. *United States,* 158 F. 2nd 2. In that case the corporation and one of its representatives were fined in the

District Court on a charge of violating General Limitation Order No. L79 of the War Production Board, because they delivered a furnace by making a false claim to the War Production Board, and the certificate was signed by the Branch Manager of the corporation. The Circuit Court of Appeals reversed as to the corporation, holding the evidence was insufficient to sustain a conviction of the corporation. The same rule was announced in Fletcher Cyc. Corporations, Vol. 3, Sec. 1349.

This rule must apply in the case at bar as to the Petitioner Chapman, and it follows he was erroneously convicted.

VI.

Should not the Court of Appeals be bound by its own decision rendered in United States v. Chapman, 168 Fed. 2nd, 997, in reviewing the identical facts with the same defendant?

In that case the Court decided Chapman, in receiving the same sidepayments mentioned herein, was acting not on behalf of the corporation, but as an individual, and the money so received constituted personal income to Chapman and not the corporation. It is earnestly submitted the Court of Appeals should be consistent when reviewing the identical facts involving the same defendant. As the matter now stands, the Court of Appeals decided in 168 F. 2nd 997, that the money so received by Chapman was his own individual income, not corporate funds, and the Court sustained Chapman's conviction for his individual failure to pay the taxes due thereon. In the case at bar, the Court of Appeals, in fact, in law, and in logic refuses to follow its first decision on that point and now says that the defendant Chapman was acting on behalf of the corporation. Had the Court of Appeals in its decision on the

income tax case rendered the same decision then as now, Chapman could not have been convicted of income tax violations because the *Wilcox* case would have been controlling. The Petitioners submit that the Court of Appeals in coming to opposite conclusions on the same identical facts, have disregarded the doctrines of *res judicata* and *stare decisis*. In both cases the parties were the same, the facts were repeated, and the Court should have been consistent in its judgment and followed its first decision, wherein it said the corporation had nothing to do with the side payments and it was a separate act. A careful examination of the opinion of the Court of Appeals indicates that virtually the entire opinion proceeds upon the theory that the corporation and the defendant Chapman were being tried for violations of the Emergency Price Control Act of 1942, as amended, when the indictment was for the crime of filing false claims.

VII.

The judgment is not supported by material, competent, substantial evidence and cannot stand.

The only material, competent or substantial evidence offered in this case, are the corporate books, records and invoices, and the subsidy claims filed by the corporation. The only direct testimony is that of Fred Sans, Jr. and Sam Chapman. All the rest of the evidence is conclusions of witnesses going to the alleged sidepayments received by Chapman.

The only evidence offered by the Government pertaining to the subsidy claims is that of the two F.B.I. Agents who drew their conclusions from a formula they invented (Tr. 301), and which was admitted by them and conclusively proven to be contrary to and in conflict with the

rules, regulations and instructions of the Defense Supplies Corporation and the R.F.C., which rules, regulations and instructions were meticulously followed by the defendant corporation (Tr. 338). It is earnestly contended that all of the substantial evidence proves the Petitioners are innocent.

In *Nicola* v. *United States,* 72 F. 2nd 780, the Court in reversing the conviction said on page 786:

> "Unless there is substantial evidence of facts which exclude every other hypothesis but that of guilt, it is the duty of the trial court to instruct the jury to return a verdict for the accused; and where all the substantial evidence is as consistent with innocence as with guilt, it is the duty of the Appellate Court to reverse a judgment of conviction. Citing, *Union Pacific Coal Co.* v. *United States,* 173 F. 737, 740; *Weiner* v. *United States,* 282 F. 779, 801; *Yusem* v. *United States,* 8 F. 2nd 6; *Ridenow* v. *United States,* 14 F. 2nd 888."

When the trial court accepted the testimony of the F.B.I. Agents as to the subsidy claims, based on their own home made formula, the Court had to disregard the rules, regulations and instructions of the duly authorized governmental agency, namely, the Defense Supplies Corporation and the R.F.C. These rules, regulations and instructions were duly promulgated and have the full force and effect of any law. The trial court cannot disregard such rules and regulations and was in error in so doing. The Court of Appeals was in error in sanctioning such a departure from the accepted and usual course of judicial proceedings and this Court should exercise its power of supervision to prevent the establishment of an incorrect and improper precedent.

CONCLUSION.

Because of the numerous important federal questions that should be settled by this Honorable Court, raised in this case for the first time in the United States, it is respectfully submitted that this Honorable Court should grant the Writ of Certiorari to the Court of Appeals for the Seventh Circuit, as prayed in the petition.

Respectfully submitted,

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MICHAEL F. MULCAHY,
HENRY W. DIERINGER,
Attorneys for Petitioner.